

REMARKS

Claim 1 is revised to incorporate the substance of Claims 6-8, and also to further define patentable differences vs. the applied art. Claim 15 is revised to incorporate the substance of Claim 20 and also to define over the applied art, and Claim 23 is revised for the same purpose. Claims 6-8 and 20 are cancelled without prejudice. Claims 1, 4, 5, 9-19, and 21-26 remain, with no claim previously allowed.

Claims 1 and 4-26 remain rejected as unpatentable over the "admitted prior art" (hereinafter "APA"). The rejection asserts that all features of the method claims, other than including the element of automation/technology, are either explicitly described by the APA or would inherently be performed in practicing the method described by the APA. The applicant respectfully traverses that argument, as possibly applied to the amended claims.

Method Claim 1 is revised to include statistically determining a representative price and vintage for each product type, from the existing inventory record, after outlier values have been removed. An "outlier value" is defined as a value beyond a credible range from the least known valid value to the greatest known valid value for a particular product type, as disclosed in the specification at page 6, line 27-page 7, lines 6. The representative price and vintage for each product type is assigned as falling near the center of the credible range for the product type, as disclosed at page 6, lines 27-29 and page 8, lines 5-8. Claim 1 thus defines a method of reconciling a current central inventory record that includes a particular manner of statistically determining a representative price and vintage for each instance of inventory added to the count by

detecting a shortage of instances of the count for the particular product type at a particular location assignment.

Contrary to the rejection, the APA does not describe, explicitly or otherwise, the foregoing aspects of the method recited in Claims 1 et al. Specification pages 1 and 2, on which the APA is based, mention performing a periodic recount of inventory (page 2, line 1) and reconciling the inventory with the count (page 2, lines 2 and 3). This comparison may require a write-off from the central inventory record (page 2, lines 11-14) or a write-on (page 2, lines 4-9) where the recount shows items not accounted for in the inventory record.

If the inventory record lacks price and vintage information for items in inventory, the conventional practice (page 2, lines 16-21) for write-ons has been to assign an arbitrary price and vintage by finding the earliest vintage and its corresponding price in the inventory record and assigning this earliest vintage. The flaws of that conventional approach are discussed at lines 22-26 of page 2.

It is apparent that the APA, although describing that conventional practice, fails to "explicitly describe" the elements required by method Claim 1, either individually or in the overall combination defined by that claim. Furthermore, nothing in the APA suggests, let alone makes inherent in practicing the APA, the combination of elements now found in Claim 1. For example, nowhere does the APA suggest statistically determining a representative price and vintage for each product type, wherein that price and vintage fall near the center of a credible range remaining for the product type after removing any outlier values. This teaching, in the overall context of the claimed method, comes only from the present applicants, and they are entitled to patent coverage thereon.

The Examiner, in response to applicants' arguments filed September 26, 2005, states that the claimed process simply does not rise to the level of "patentable invention". The test of "patentable invention" under 35 U.S.C. 103(a) is, of course, whether the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the pertinent art. Applying that test of patentability, the gaps between the APA and the claimed method are substantial and are not met by merely keeping an inventory record, performing a periodic check of inventory, and then updating the inventory data to match what was actually found on the shelves. Accordingly, method Claims 1 et al. would not have been obvious to one of ordinary skill at the time the present invention was made, and those claims are patentable over the APA.

The Examiner also mentions (page 7 of the last Office action) "the argument that there is no suggestion to combine the references...". The applicants made no such argument in their previous response (filed May 12, 2005). Furthermore, it does not appear that the previous rejection was based on a combination of references.

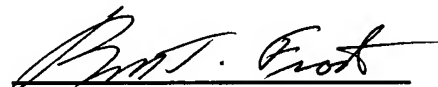
Turning to the system Claims 15-26, those claims are here amended to include system elements operative to provide the novel functions mentioned above with respect to determining representative price and vintage for each instance added to the count in central inventory, for a product type. The rejection asserts that it would have been obvious to one of ordinary skill to have provided apparatus such as recited in Claims 15-26 (prior to the present amendments), because providing an apparatus to replace manual activity which would accomplish the same result involves only routine skill in the art. *In re Venner*, 120 USPQ 192 (CCPA 1958) is cited in support.

The applicants respectfully submit that reliance on *Venner*, in the present case, is misplaced. The court in *Venner* found that each element of *Venner's* claimed invention was recognized in the art, and concluded that adding the timing devices of the secondary reference to the mold structure of the primary reference, thereby providing mechanical or automatic means to replace manual activity which had accomplish the same result, was not "invention". The present apparatus claims, unlike the claims in *Venner*, include specific novel elements beyond any manual activity taught by the APA, either explicitly or in a manner obvious to one of ordinary skill from the APA. Accordingly, the apparatus claimed by the applicants is patentable over the APA.

The foregoing is submitted as a complete response to the Office action identified above. The applicants respectfully submit that the present application is in condition for allowance and solicit a notice to that effect.

Respectfully submitted,

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